

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





B/85  
**74-1913**

---

**United States Court of Appeals**

FOR THE SECOND CIRCUIT

---

IN THE MATTER

—OF—

SAREX CORPORATION,

*Bankrupt.*

SELENA GOUDEAU,

*Plaintiff-Appellee,*

v.

IRVING ARZT, Trustee of Sarex Corp., Bankrupt,

*Defendant-Appellant.*

---

On Appeal from the United States District Court  
for the Southern District of New York.

---

---

**APPELLANT'S APPENDIX**

---

---

HENRY & BRECKER

*Attorneys for Defendant-Appellant*

40 Exchange Place

New York, New York 10005

Telephone: (212) HA 5-7440



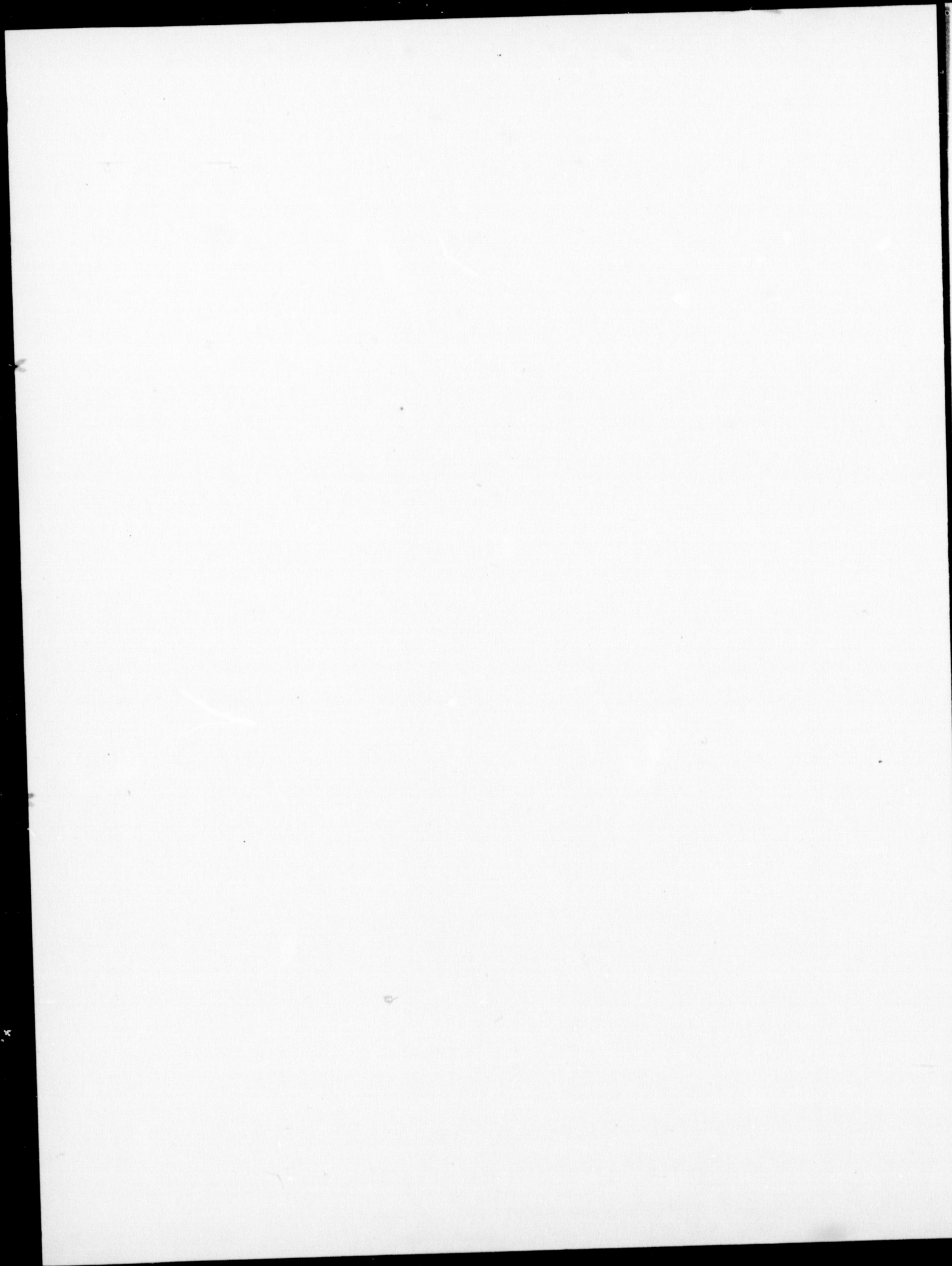
PAGINATION AS IN ORIGINAL COPY

## INDEX

---

	PAGE
Docket Entries—District Court .....	1a
Docket Entries—Bankruptcy Court .....	4a
Notice of Appeal to Court of Appeals .....	21a
Memorandum and Order, Pierce, J. ....	23a
Notice of Appeal to District Court .....	25a
Order Granting Reclamation .....	27a
Opinion, Roy Babitt, Bankruptcy Judge, Dated January 15, 1974 .....	32a
Security Agreement, Dated July 15, 1970 .....	57a
Financing Statement, Dated July 23, 1970 .....	59a





**A 1a**  
**DOCKET ENTRIES-DISTRICT COURT**

DIST. NO. DIV. NO. <span style="float: right;">DOCKET NO. <b>79 B 62</b></span>			
First Middle Last <b>XXXXXX</b> <b>XXXXX CORPORATION</b>  Change of status 4-14-72 From XI to 4			
ADDRESS OF BANKRUPT/DEBTOR (Number and Street)  <b>441 Lexington Avenue</b>			
CITY	ZONE	COUNTY	STATE
<b>New York</b>	<b>17</b>	<b>New York</b>	<b>N.Y.</b>
NO ASSET CASES ONLY CLAIMS AS SCHEDULED <input checked="" type="checkbox"/>		TOTAL \$	PRIORITY \$ SECURED \$ UNSECURED \$
CHAPTER OR SECTION <b>XI 322</b> DATE PETITION FILED <b>Aug. 13/70</b> DATE CLOSED DISCHARGE <input checked="" type="checkbox"/> Granted <input type="checkbox"/> Denied <input type="checkbox"/> Waived or not applied for			
CHECK IF <input checked="" type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Trust or other entity <input type="checkbox"/> Corporation OCCUPATION <input type="checkbox"/> Farmer <input type="checkbox"/> Employee <input type="checkbox"/> Professional <input type="checkbox"/> Other (Non business) <input type="checkbox"/> Merchant <input type="checkbox"/> Manufacturer <input type="checkbox"/> Other (Business)			
PETITION DISMISSED? <input type="checkbox"/> YES		DATE DISMISSED NAME OF JUDGE <b>Roy Babbitt.</b>	
NAME OF REFEREE <b>Roy Babbitt.</b>			
ATTORNEY FOR BANKRUPT OR DEBTOR <input checked="" type="checkbox"/>			
NAMES AND ADDRESSES <b>XXXXX CORPORATION, 441 Lexington Ave., New York, N.Y. 10017 (904-0033)</b>			
ATTORNEY FOR PETITIONING CREDITORS <input type="checkbox"/>			
RECEIVER <input type="checkbox"/>			
ATTORNEY OR RECEIVER <input type="checkbox"/>			
TRUSTEE <input type="checkbox"/>			
ATTORNEY OR TRUSTEE <input type="checkbox"/>			
NAMES OF PRINCIPALS			

DATE	PROCEEDINGS
<b>Aug/13/70</b>	<b>Filed petition, list of creditors, statement of executory contracts, affidavit pursuant to Rule XI-2 by O. Louis Sada, Summary of assets and liabilities-referred to Referee Babbitt.</b>
<b>Aug. 14-70</b>	<b>Filed referee's certified copy of Petition &amp; order authorizing debtor in possession to operate business, etc.</b>
<b>Sept. 28-70</b>	<b>Filed schedules &amp; statement of affairs..cs.</b>
<b>Nov. 16-70</b>	<b>Filed referee's certificate pur rule XI-10...</b>
<b>4-23-71</b>	<b>Filed amended arrangement..</b>
<b>4-14-72</b>	<b>Filed certified copy of Referee's order adjudging debtor's bankrupt. Adjudication from XI to 4</b>
<b>4-14-72</b>	<b>Filed certified copy of order appointing Irving Arzt, (over)</b>



**A****2a**

4-14-72

of 401 Broadway New York, N.Y., as Trustee, and the amount of his bond is fixed at \$50,000.00.

- 8-7-72 Filed Referee's certificate of Contempt. Dated August 2, 72
- 8-7-72 Filed Order to Show Cause to Punish Respondents for Contempt. Let, National Cinematape Inc and Anna Magocsi show cause US Court, Room 110, on the 29th Day of August 1972, 10:00AM why they should not be adjudged in contempt by the reason of the facts certified in the aforesaid certificate dated August 2, 72 and filed 8-7-72. \*\*\*\*\*Referee Babitt...
- 8-10-72 Filed affidavit of Service of Malone, on Aug. 8, 72. Re: above Order to Show Cause.
- 10-25-72 Filed Memo-Endorsed on back of above Referee's certificate of Contempt. MemO\* It appearing that National Cinematape, Inc & Anna Magocsi, an officer, have failed to show cause why they should not be held in contempt for failure to comply with an order dated May 24, 1972 of Hon Roy Babitt, Referee and that service of due process was made upon them. it is ordered that.. National Cinematape Inc & Anna Magocsi are held in contempt. So Ordered.....Gagliardi, J. n/r
- 1-5-73 Filed order adjudging Anna Magocsi in contempt.\*\*\*\*\*Ordered that Anna Magocsi may purge herself of contempt before Jan. 15, 1973 by turning over the books, papers, and records and other instruments belonging to the bankrupt estate\*\*\*\*\*. Ordered that if Anna Magocsi fails to purge herself of contempt before Jan. 15, 1973, the U.S. Marshal for the S.D. of N.Y. be and is hereby directed to apprehend confine and detain her in the Federal House of Detention, 121 West St., N.Y., to be there so detained until the further orders of this Court.....Gagliardi, J. Dated 1-4-73. n/r
- 3-12-73 Filed Revised Order...Ordered, that Anna Magocsi is guilty of contempt of this Court in having wilfully disobeyed, impeded and impaired the rights of the creditors and Trustee herein, in having wilfully and deliberately disobeyed said lawful order of said Referee of Bankruptcy and neglecting and refusing, as in said order directed to turn over to the Trustee herein, all of the books, papers, records, and other instruments belonging to the bankrupt estate to file with this Court an inventory under oath of each and every item of physical assets belonging to the bankrupt estate\*\*\*\*\*  
\*\*\*Gagliardi, J. n/r
- 3-22-73 Rec'd copy of notice that Anna Magocsi, referred to by Gagliardi of Bankruptcy... Anna Magocsi paroled in her own custody to report back to the Hon. Roy Babitt when required. n/r
- 3/6/74 Received from Bankruptcy J. NOTICE OF APPEAL to the U.S.D.C. from the Order of Bankruptcy Judge J. Gagliardi of 3/4/74. DEC. 1974: TUESDAY APRIL 16th, 1974 at 10:30 A.M. in Room No. 506. BROWN FOLDER TO BE RETURNED.
- 3/29/74 Filed Trustee-Appellants' Memorandum of Law, sub. by: Henry and Breck attorneys for trustee (re: trustee's appeals from order of Bankruptcy Judge Babitt dated: 2/2/74).
- 4/15/74 Filed Stipulation for adjournment of appeal for: 4/16/74 to: APRIL 23rd, 1974 at 10:30 A.M. in Room 506 by: Lancy, Rosen and Miller attorneys for Appellee, Dated: 4/12/74.

A

3a

PAGE 3.

SAREX CORPORATION

70 B 621

DATE	PROCEEDINGS
4/17/74	Filed Appellee's Memorandum of Law sub. by: Landay, Rosen and Miller, Attorneys for Appellee, Michael Miller, of Counsel.
5/24/74	Filed MEMORANDUM AND ORDER re: appeal from the Referee's order granting a creditor's motion for an accounting and turnover of funds and overruling the trustee's defenses to the claimed security interest.....The Referee's Order is hereby affirmed. SO ORDERED. JUDGE PIERCE, DATED: 5/22/74. <u>COPY TO BANKRUPTCY JUDGE, BABITT. BROWN FOLDER RETURNED.</u>
6/20/74	Filed NOTICE OF APPEAL to USCA from the order of HON. PIERCE, entered on the 22nd day of May, 1974 affirming the order of the Hon. Roy Babitt dated: 2/5/74 directing the trustee of the bankrupt to pay to Selena Goudeau, plaintiff herein, \$10,000.00, etc. by: Henry and Brecker, attorneys for trustee. Dated: 6/20/74. Dated: 6/20/74.
7-30-74	Filed stipulation transmitting true copies of originally filed documents (which were filed in Bankruptcy Court). Original documents could not be found.
7-30-74	Filed original record on appeal. It has been certified and transmitted to the U.S. Court of Appeals for the Second Circuit on July 30, 1974.



A

4a

## DOCKET ENTRIES-BANKRUPTCY COURT

FM(Aft.Adj.)

LD December 1,

FM(Chpt.XI) September 17, 1970

May 31st, 1972

1970

NAME OF BANKRUPT DEBTOR <b>Tax I.D.# 22-183-0683</b>				EST. NO. DIV. NO. <b>208</b>		DOCKET NO. <b>70 B 621</b>	
Last First Middle <b>SAREX CORPORATION</b>				CHAPTER OR SECTION <b>XI-322</b>		CHECK IF <input checked="" type="checkbox"/> Voluntary <input type="checkbox"/> Involuntary	
ADJUDICATED-----April 14, 1972				DATE PETITION FILED <b>Aug/13/70</b>		<input checked="" type="checkbox"/> Fee paid in installments <input checked="" type="checkbox"/> Corporation	
				DATE CLOSED		OCCUPATION Farmer Employee Professional Other Non-business Merchant Manufacturer Other Business	
ADDRESS OF BANKRUPT/DEBTOR (Number and Street) <b>441 Lexington Avenue</b>				DISCHARGE <input checked="" type="checkbox"/> Granted <input type="checkbox"/> Denied <input type="checkbox"/> Waived or not applied for		(Check one) <input checked="" type="checkbox"/> Merchant <input type="checkbox"/> Manufacturer <input type="checkbox"/> Other Business	
CITY ZONE COUNTY STATE <b>New York 17 New York N.Y.</b>				DATE DISCHARGED		PETITION DISMISSED? <input type="checkbox"/> YES <input type="checkbox"/> NO DATE DISMISSED NAME OF JUDGE	
NO ASSET CASES ONLY CLAIMS AS SCHEDULED <input checked="" type="checkbox"/>				TOTAL \$		PRIORITY \$ SECURED \$ UNSECURED \$	
ATTORNEY FOR BANKRUPT OR DEBTOR		NAMES AND ADDRESSES <b>Levin &amp; Weintraub, Esqs. 225 Broadway, NYC, NY 10007 ( 964-0033)</b>					
ATTORNEY FOR PETITIONING CREDITORS		DISTRIBUTOR: <b>Max K. Schlem 233 Broadway, N.Y.C.</b>					
RECEIVER							
ATTORNEY FOR RECEIVER							
TRUSTEE		<b>IRVING ARZT 401 Broadway, New York City</b>				Bond (\$50,000.00)	
ATTORNEY FOR TRUSTEE		<b>HENRY &amp; BRECKER 40 Exchange Place, New York City</b>					
CHANGES OF PRINCIPALS							
DATE		PROCEEDINGS					
Aug/13/70		Filed petition, list of creditors, statement of executory contracts, affidavit pursuant to Rule XI-2 by O. Louis Seda, summary of assets and liabilities-referred to Referee Babitt.					
8/13		Received from the Clerk of the Court the above papers.					
8/13		Referee signed order authorizing DIP to Operate Business. etc. Certified copy sent to the Clerk of the Court and Secretary of Treasury.					
(2)	8/13	Referee signed stay order.					



DATE	PROCEEDINGS
(3) 8/13/70	Referee signed order authorizing DIP to retain Levin & Weintraub as its Attorneys.
(4) 8/13	Referee signed order extending the time to file Schedules and Statement of Affairs for a period of ten (10) days from the date of this order.
(5) 8/13	Mailed to 10 Largest Creditors notice of Rule XI-4 H & C, filed VCH affidavit of mailing. Hearing on August 18 & 19, 1970 at 10:30.
(6) 8/13	Referee signed order authorizing DIP to retain Robert A. Wiener Co. as its Accountants, etc.
8/18	Rule XI-4 H & C held & adj. to August 27, 1970 at 11:00.
(7) 8/19	Referee signed order authorizing payment of Salaries to Officers by DIP.
(8) 8/21	Mailed 233 notices of First meeting, Chapter XI to creditors, filed ADL affidavit of mailing. Hearing on September 17, 1970 at 10:30.
(9) 8/25	Referee signed order extending the time to September 8, 1970 to file Schedules and Statement of Affairs.
(10) 8/25	Filed affidavit of publication by Daily News Record, re: First meeting of creditors, Chapter XI.
8/27	Adj. XI-4 held & adj. to September 17, 1970 at 10:30.
9/17	First meeting of creditors, Chapter XI held Irving Artz Of 401 Broadway, New York, New York was elected Tentative Trustee. Creditors' Committee appointed. Hearing adj. to October 15, 1970 at 10:30. Adj. XI-4 held & adj. to September 29, 1970 at 12:00. Hearing on exparte order held & adj. to September 18, 1970 at 12:00.
(11) 9/17	Referee signed order approving the appointment of Creditors' Committee.
9/18	adj. hearing on ex-parte order held & concluded. (See Referee's memo endorsed----motion denied. So ordered)

SAREX CORPORATION

ROY BABITT

70 B 621

DOCKET NUMBER

	DATE	PROCEEDINGS
(12)	9/24/70	Referee signed order extending time to September 28, 1970 to file Schedules and Statement of Affairs.
	9/29	Received from the Clerk of the Court in duplicate Schedules and Statement of Affairs.
(13)	9/29	Filed OSC, re: staying creditors. Returnable October 2, 1970 at 10:00.
	9/29	Adj. XI-4 held & adj. to October 15, 1970 at 10:30.
(14)	9/30	Filed affidavit of service by mail, re: OSC filed 9/29/70
	10/2	OSC, re: restrain (Staying creditors) held & adj. to October 15, 1970 at 10:30.
(15)	10/15	Filed Answer, re: OSC filed 9/29/70 staying creditors.
	10/15	AFM, Adj. XI-4, Adj. OSC, re: to stay creditors held & adj. to October 19, 1970 at 9:30.
	10/19	AFM, Adj. XI-4, Adj. OSC, re: to stay creditors held & adj. to October 29, 1970 at 9:45.
	10/29	AFM, Adj. XI-4, Adj. OSC, re: restrain (stay) held & adj. to November 10, 1970 at 9:45.
(16)	11/5	Filed petition to reclaim by Union County Trust Company. Paid \$10.00 to the Clerk of the Court, receipt #90616.
	11/10	AFM, Adj. XI-4, Adj. OSC, re: restrain (stay) held & adj. to November 24, 1970 at 9:45.
	11/19	Reclamation Motion (Union County Trust Co.) held & adj. to December 22, 1970 at 10:00.
	11/24	AFM, Adj. XI-4, Adj. OSC restrain (stay) held & adj. to December 17, 1970 at 10:00.
	11/24	Filed in duplicate Statement of Operations for the period August 13, 1970 through October 15, 1970.
	12/17	AFM, Adj. XI-4, Adj. OSC, re: restrain held & adj. to January 7, 1971 at 10:00.
	12/18	Filed statement of operations in duplicate for the period August 13, 1970 to November 15, 1970.
(17)	12/18	Referee signed order amending order of 8/19/70 authorizing payment of Salaries to Officer.
	12/22	Adj. recl. motion (Union County) held & adj. to January 18, 1971 at 10:30.
	12/23/70	Filed notice of Assignment of Claim #96.



DATE	PROCEEDINGS
<u>1971</u>	
1-5-71	Referee signed order assigning Claim #96 to William Blethen.
1-7-71	AFM, Adj. XI-4, Adj. OSC re: restrain held and adj. to January 14, 1971 at 10:00.
(18) 1/11	Filed petition to reclaim (Chandler Leasing Division, Pepsico Service Industries Corporation) Paid \$10.00 to the Clerk of the Court, receipt #92898. Returnable January 26, 1971 at 2:00. Service attached.
1-13-71	Filed in duplicate Statement of Operations for the period of August 13 through December 31, 1970.
1/14	AFM, Adj. XI-4, Adj. OSC compel payment, held & adj. to 2/11 at 10:00
19) 1/18	Filed n/m with service attached, re: dismiss proceedings. Returnable January 18, 1971 at 10:30.
1/18	Adj. recl. motion (Union County), Motion, re: dismiss proceedings held & adj. to February 11, 1971 at 10:00.
1-26-71	Recl. motion (Chandler Leasing) adj. to February 11, 1971 at 10:00.
2-1-71	Referee signed order approving stipulation and rejecting and disaffirming employment agreement dated December 5, 1968 between debtor and O. Louis Seda.
2-2-71	Filed OSC re: stay. Returnable on February 11, 1971 at 10:00.
2-3-71	Filed answer by Attorneys for D-I-P re: motion to dismiss proceedings.
2-11-71	Filed affidavit of service re: OSC signed 2/2/71.
2-11-71	AFM, Adj. XI-4 held and adj. to February 22, 1971 at 10:00. Adj. Recl. motions re: (Chandler Leasing, Union County Trust) held and adj. to February 22, 1971 at 10:00. Adj. OSC re: restrain, etc.(stocks) adj. to February 22, 1971 at 10:00. Adj. mtn. to dismiss proceedings----- withdrawn, OSC re: restrain (landlord) held and closed. (See Referee's memo endorsed-----Motion granted on default. Settle order on notice.)

SAREX CORPORATION

ROY SABITT

RB pg. 3  
70 B 621  
DOCKET NUMBER

DATE	PROCEEDINGS
2-16-71	Referee signed stay order.
2-18-71	Referee signed order partially vacating order dated August 13, 1970 restraining creditors from proceeding with actions.
2-22-71	AFM, Adj. XI-4, Adj. recl. mtns. (Chandler, Union County), Adj. OSC re: restrain, etc. (stocks) held and adj. to March 2, 1971 at 12:00.
3-2-71	AFM, Adj. XI-4, Adj. recl. mtns. (Chandler/Union County), Adj. OSC re: restrain, etc. (stocks) held and adj. to April 6, 1971 at 10:30.
3-3-71	Filed in triplicate Plan of Arrangement. Copies sent to Clerk of the Court & Secretary of the Treasury.
3-11-71	Referee signed order authorizing D-I-P to pay Luminall Paints, Inc. for use and occupation and partially vacating order restraining creditors.
3-23-71	Mailed 357 notices of Plan of Arrangement to creditors, filed NLH affidavit of mailing.
3-26-71	Filed affidavit of publication by Daily News Record re: Plan of Arrangement.
4-6-71	AFM, Adj. XI-4, Adj. recl. mtns. (Chandler, Union County), Adj. OSC re: restrain, etc. held and adj. to April 19, 1971 at 10:30.
4-8-71	Referee signed order authorizing National Cinematape, Inc. of 2703 Horizon Towers North, Fort Lee, New Jersey to operate business.
4-15-71	Referee signed order authorizing D-I-P to file proposed amended Plan of Arrangement
4-15-71	Filed in triplicate amended Plan of Arrangement. Copy mailed to Secretary of the Treasury and Clerk of the Court.
4-19-71	AFM, Adj. XI-4, Hrg. on Conf., Adj. OSC re: restrain, Adj. recl. motion (Chandler - Union County) held and adj. to May 3, 1971 at 11:30.



DATE	PROCEEDINGS
5-3-71	AFM, Adj. XI-4, Adj. Conf., Adj. OSC re: restrain, Adj. rec. mtns. (Chandler/Union County) held and adj. to May 25, 1971 at 10:00.
5-6-71	Referee signed order authorizing D-I-P to sublease premises.
5-10-71	See Referee's memo endorsed on order dated 5-6-71. (The within order is modified to the extent that its terms are subject to the willingness of the landlord or other sublessors to the proposed sublease. It is so ordered.)
5-19-71	Referee signed order authorizing D-I-P to enter sales agreement with National Cinematape Inc and Tapesales Inc.
5-25-71	AFM, Adj. XI-4, Adj. Conf., Adj. OSC re: restrain, Adj. recl. motions (Chandler/Union County) held and adj. to June 8, 1971 at 10:00.
5-26-71	Filed in duplicate Statement of Operations for the period of August 13, 1970 to April 15, 1971.
5-26-71	Referee signed order vacating order dated May 6, 1971 and directing that no person shall remove any property.
6-8-71	Acceptances filed.
6-8-71	AFM held and closed. Plan accepted. Max K. Schlem of 233 Broadway, New York City was appointed distributor under a \$1,000.00 bond. Adj. XI-4, Adj. Conf., Adj. OSC re: restrain, Adj. recl. motions (Chandler/Union County) held and adj. to June 29, 1971 at 10:00.
6-9-71	Referee signed order approving appointment of Max K. Schlem of 233 Broadway, New York City as distributor under a \$1,000.00 bond. True copy sent to distributor and Attorneys for the Debtor.
6-14-71	Filed distributor's bond.
6-15-71	Referee signed order approving distributor's bond. Three true copies sent to distributor.

**A**

10a

**SAREX CORPORATION****ROY BABITT****RB****pg. 4****70 B 621****DOCKET NUMBER**

DATE	PROCEEDINGS
6-16-71	Filed notice of motion with affidavit of service attached re: reducing or expunging claims. Returnable on June 29, 1971 at 10:00.
6-16-71	Filed notice of motion with affidavit of service attached re: order directing release and t/o of property to D-I-P. Returnable on June 29, 1971 at 10:00.
6-16-71	Filed OSC re: release and turnover of molds. Returnable on June 24, 1971 at 1:00.
6-17-71	Referee signed order expunging claim #96 by William M. Blethen.
6-23-71	Filed answer by Anco Tool & Die Co., Inc. re: contesting jurisdiction.
6-24-71	OSC re: Crystal adj. to July 27, 1971 at 2:00.
6-24-71	Filed affidavit of service re: OSC with stay dated 6-16-71.
6/29	Adj. XI-4, Adj. Con f., Adj. OSC to restrain, Mtn. obj. to claims, Mtn. T/O molds, Adj. recl. mtns. (chandler /Union County) held & adj. to 7/27/71 at 10:30.
6/30	Referee signed order directing T/O of property to DIP, etc.
7/2	Filed affidavit in opposition by Avis Rent A Car System re: obj to clm ret. 7/27 at 10:30.
7/2	Filed n/m with affidavit of service, re: to reject & disaffirm lease of premises, etc. Ret. 7/27 at 2:00 P.M.
7/2	Filed n/m with affidavit of service, re: for turnover of mold, etc. Ret. 7/27 at 10:30.
7-20-71	Filed affidavit by William Mack in opposition to motion dated 7-2-71 re: reject and disaffirm lease.
7-22-71	Referee signed order approving agreement of debtor and D-I-P with National Cinematape Inc., etc.
7-23-71	Filed Statement of Operations for the period of August 13, 1970 to June 15, 1971.
7-23-71	Filed answer of Damascus Tool Co. by its attorneys re: petition of the debtor dated June 14, 1971.



DATE	PROCEEDINGS
7-23-71	Filed answer by Attorney for Luminall Paints, Inc. in opposition to petition in support of motion to disaffirm lease of premises.
7-27-71	Adj. XI-4, Adj. Conf, Adj. OSC restrain, Adj. obj. to claims, Adj. recl. motions (Chandler/Union County) held and adj. to August 5, 1971 at 10:00. Motion t/o held and adj. to August 5, 1971 at 10:30.
7-27-71	Adj. OSC re: Crystal, Adj. OSC re: t/o molds adj. to August 5, 1971 at 10:30. Motion to reject/disaffirm lease held and adj. to August 16, 1971 at 10:00. Adj. mtn. t/o molds held and closed. (See Referee's memo endorsed-----Motion granted on default. Submit order.)
7-27-71	Referee signed order directing Atlantic Tool & Die Co. to t/o mold to D-I-P.
8-5-71	Adj. XI-4, Adj. Conf., Adj. OSC re: restrain held and adj. to August 16, 1971 at 10:00. Adj. Obj. to claim held and adj. to 8-16-71 & 9-13-71 at 10:00. Adj. recl. mtns. (Chandler/Union County) adj. to August 16, 1971 at 10:00. Adj. mtn. t/o, Adj. OSC re: Crystal held and adj. to 8-16-71 at 10:00.
8-10-71	Referee signed order expunging, reducing, withdrawing objections and reclassifying certain claims.
8-10-71	Referee signed order reclassifying claim #127 as part general and part administration claim and withdrawing reclamation petition filed by Chandler Leasing.
8-16-71	Adj. mtn. reject/disaffirm held and closed. Adj. recl. mtns. (Chandler/Union County) held and closed. Adj. XI-4, Adj. Conf, Adj. obj. to claims, Adj. OSC stay held and adj. to September 13, 1971 at 10:00. Adj. OSC (Crystal), Adj. t/o molds adj. to September 13, 1971 at 10:00.
8-24-71	Referee signed order approving stipulation between Attorneys for the debtor and D-I-P and Damascus Tool Company.

SAREX CORPORATION

ROY BABITT

70 B 621

DOCKET NUMBER

DATE	PROCEEDINGS
9-13-71	Filed stipulation of facts between Attorneys for the Debtor and attorneys for A.N. Deringer, Inc., etc.
9-13-71	Adj. XI-4, Adj. Conf., Adj. obj. to claims, Adj. OSC (Crystal), Adj. OSC stay, Adj. t/o molds held and adj. to September 28, 1971 at 10:00.
9-17-71	Referee signed order reducing claims #115 and #116 filed by American Magnetics Tape Equipment Corp.
9-20-71	Filed memorandum by Attorneys for A.N. Deringer Inc. re: in support of claim for priority status.
9-27-71	Filed Referee's memorandum opinion sustaining trustee's objection to priority status for claims #71 & 118.
9-28-71	Adj. XI-4, Adj. Conf., Adj. OSC (Crystal), Adj. OSC stay, Adj. t/o molds held and adj. to October 14, 1971 at 11:00. Adj. obj. to claims held and closed.
9-30-71	Referee signed order reducing and reclassifying as general claims, claims #71 and 118 by A.N. Deringer, Inc., etc.
10-6-71	Referee signed order approving stipulation between debtor and D-I-P and Crystal Thermoplastics Inc. and fixing claims
10-14-71	Adj. XI-4, Adj. Conf., Adj. OSC stay : held and adj. to November 9, 1971 at 10:30. Adj. OSC (Crystal)----- withdrawn. Adj. t/o molds held and closed. (Memo endorsed along side of each)
10-22-71	Filed Statement of Operations for the month of July, 1971.
10-22-71	Filed Statement of Operations for the month of August, 1971.
10-22-71	Filed Statement of Operations for the month of September, 1971.
11-9-71	Adj. XI-4, Adj. Conf., Adj. OSC stay held and adj. to November 30, 1971 at 10:00.
11-30-71	Adj. XI-4, Adj. Conf., Adj. OSC stay held and adj. to January 6, 1971 at 11:00.



DATE	PROCEEDINGS
12-2-71	Referee signed order appointing Bernard Reuben of 369 E. 149th Street, Bronx, New York as appraiser. Xerox copy sent to appraiser.
1-3-72	Filed appraiser's oath & appraisal. (B. Reuben)
1-3-72	Filed appraiser's application for allowance.
1-6-72	Adj. XI-4, Adj. Conf., Adj. OSC stay held and adj. to February 1, 1972 at 10:00.
1-11-72	Referee signed order directing D-I-P to pay Luminall Paints Inc. for balance of rent on or before 1-28-72, etc.
2-1-72	Adj. XI-4, Adj. Conf., Adj. OSC held and adj. to February 3, 1972 at 10:00.
2-3-72	Adj. XI-4, Adj. Conf., Adj. OSC held and adj. to February 4, 1972 at 9:45.
2-4-72	Adj. XI-4, Adj. Conf., Adj. OSC held and adj. to February 15, 1972 at 10:00.
2-15-72	Adj. XI-4, Adj. Conf., Adj. OSC held and adj. to February 29, 1972 at 11:00.
2-24-72	Filed notice of motion with affidavit of service re: renewal of reclamation motion by Chandler Leasing Div. of Pepsico Service Industries Corporation. Paid \$10.00 to the Clerk of the Court, rec. #6666. Ret. February 29, 1972 at 11:00.
2-29-72	Adj. XI-4, Adj. Conf., Adj. OSC held and adj. to March 2, 1972 at 10:00. Reopened recl. mtn. (Chandler) held and closed. (See Referee's memo endorsed-----Motion dated 1-11-72--Motion granted. Submit 7 day order unless payment is made of arrears on or before March 2, 1972) Motion dated 2-24-72---Motion granted. So ordered.)
3/2/72	Adj XI-4, adj conf, adj OSC held & adj to 3/16 at 10:00.
3/3/72	Referee signed order granting Chandler to renew appl. for reclama <del>and</del> granting him to reclaim property, to file an amended claim, and amending order of 8/10/71.
3-10-72	Filed notice of motion with affidavit of service attached re: Petition for Reclamation for Selena Goudeau Seda. Paid \$10.00 to the Clerk of the Court, rec. #7287. Returnable on March 16, 1972 at 10:00.

**A**

14a

ROY BABITT

SAREX CORPORATION

RB pg. 6

70 B 621

LOCKET NUMBER

DATE	PROCEEDINGS
3-16-72	Adj. XI-4, Adj. Conf, Adj. OSC held and adj. to March 23, 1972 at 9:30. Recl. motion (Selena) held and closed. (See Referee's memo endorsed-----Motion granted on consent. Execution stayed until further order of the Court. Submit order.)
3-22-72	Referee signed order granting reclamation motion by Selena, etc.
3-23-72	Adj. XI-4, Adj. Conf., Adj. OSC held and adj. to April 13, 1972 at 10:00.
4-6-72	Referee signed order authorizing Selena to execute order of 3-22-72 & reclaim property, etc.
4-7-72	Referee signed order partially vacating order restraining creditors from proceeding with actions, etc.
4-13-72	Adj. XI-4, Adj. Conf., Adj. OSC held and closed----- [Adjudicated]
4-14-72	Referee signed order of Adjudication and appointing Irving Arzt of 401 Broadway, New York City as trustee under a \$50,000.00 bond. Certified copy sent to Clerk of the Court, Secretary of the Treasury, Commissioner of Internal Revenue and Trustee.
4-17-72	Filed Trustee's bond.
4-17-72	Referee signed order approving trustee's bond. Three true copies sent to trustee.
4-19-72	Referee signed order directing Debtor to file List of Unpaid Obligations, etc pursuant to section 378a(3) of the Bankruptcy Act. True copies sent to President, Director, Director & Attorneys for the Bankrupt.
4-19-72	Mailed true copies of orders to President, Director, Director & Attorneys for the Bankrupt, filed IF affidavit of mailing. (LIST TO BE FILED ON OR BEFORE May 19, 1972)
4-19-72	Referee signed order authorizing trustee to retain Clarence Rainess & Co. as accountants.
4-19-72	Referee signed order of Sale and appointing Bernard Reuben of 369 E. 149th St., Bronx, New York as appraiser, etc. Xerox copy sent to Underwriters Salvage Co. & appraiser.
4-24-72	Filed OSC re: declaring lien of Luminall Paints, Inc. null and void, etc. Returnable on May 2, 1972 at 11:30.



DATE	PROCEEDINGS
4-24-72	Referee signed order authorizing trustee to retain Henry & Brecker as his attorneys.
4-28-72	Referee signed order permitting Luminall Paints, Inc. to proceed with auction sale scheduled for 5-1-72 at 10:00.
5-1-72	Referee signed order directing Max K. Schlem to pay over certain sum to the estate of the bankrupt.
5-2-72	OSC discharge lien held and adj. to May 10, 1972 at 11:00.
5-2-72	Filed appraiser's oath and appraisal. (B. Reuben)
5-2-72	Filed appraiser's application for allowance.
5-10-72	Adj. OSC discharge lien held and closed. (See Referee's memo endorsed-----Motion is granted as a matter of law. Submit an order.)
5-10-72	Referee signed order authorizing trustee to purchase certificate of deposit.
5-10-72	Filed auctioneer's report.
5-11-72	Filed OSC re: directing John Feitner or Sam Sherba of PCM Plastics, Inc. to t/o and deliver to Selena Goudeau Seda certain property. Returnable on May 22, 1972 at 11:00.
5-11-72	Filed OSC re: directing trustee to t/o proceeds of sale of property sold in a lien sale to Selena Goudeau Seda, etc. Returnable on May 22, 1972 at 11:00.
5-12-72	Filed affidavit of service re: OSC dated 5-11-72 directing J. Feitner, etc. to t/o, etc. Ret. 5-22-72 at 11:00.
5-12-72	Filed affidavit of service re: OSC dated 5-11-72 directing t/o to Selena Goudeau Seda, etc. Ret. 5-22-72 at 11:00.
5-19-72	Mailed 318 notices of First Meeting after Adjudication to creditors, filed NLH affidavit of mailing. Hearing on May 31, 1972 at 10:30.
5-22-72	OSC (2) held and adj. to June 6, 1972 at 11:00.
5-22-72	Referee signed order vacating lien of Luminall Paints, Inc. and directing payment.

ROY BABITT

70 B 621 RB

DOCKET NUMBER

## SAREX CORPORATION

DATE	PROCEEDINGS
5/24/72	Referee signed order directing National Cinematape, Inc. to surrender to trustee within five days after receipt of order bankrupt's books, records, papers & instruments, etc.
5/31/72	First meeting after adjudication adjourned to June 6, 1972 at 11:00.
6/6/72	AFM held and adj. to June 22, 1972 at 3:00. Adj. OSC (1) adj. to June 15, 1972 at 8:30.
6/12/72	Filed notice of motion with affidavit of service re; directing trustee to pay certain sum to Martin Fein & Co., etc. Returnable on June 13, 1972 at 10:00.
6/13/72	Motion re: auctioneer expenses held and closed.
6/13/72	Referee signed order authorizing trustee to pay Martin Fein & Co., Inc. certain sum, etc.
6/15/72	Adj. OSC held and adj. to August 1, 1972 at 11:30.
6/15/72	Filed OSC re: order citing National Cinematype Inc. in contempt of court, etc. Returnable on July 11, 1972 at 11:30.
6/21/72	Filed notion of motion with affidavit of service re: for an order to vacate orders of the Referee, etc. Returnable on August 1, 1972 at 11:30.
6/21/72	Filed answer by attorney for trustee, re: OSC directing trustee to t/o proceeds of sale of property sold in a lien sale to Selena Goudeau Seda, etc. Ret. August 1, 1972 at 11:30.
6/22/72	AFM adj. to July 12, 1972 at 1:30.
6/23/72	Referee signed order permitting purchase of certificate of deposit.
6/27/72	Referee signed order directing trustees to pay over certain sum to Standard Equity Co., Inc., etc.
7/11/72	Motion re: citing National Cinematape, Inc. held and adjourned to July 25, 1972 at 11:00. See Referee's memo... For want of acceptance of service the matter is adjourned until July 25, 1972 at 11 A.M. and service is to be effected by certified mail or personal service on or before July 17, 1972. It is so ordered.
7/11/72	OSC re: contempt held and adj. to July 25, 1972 at 11:00.
7/12/72	AFM held & adj. to August 1, 1972 at 11:00.



DATE	PROCEEDINGS
7/14/72	Filed affidavit of service re: OSC contempt.
7/25/72	Adj. OSC re: contempt held and closed. See Referee's memo...Application granted on default. Submit order and certificate.
7/26/72	See Referee's memo on OSC to cite respondent for contempt... The above is vacated and the motion placed on July 27, 1972 calendar. So ordered.
7/27/72	Adj. OSC re: contempt held and closed. See Referee's memo... The endorsement of 7/25/72 is reinstated. Submit order and certificate.
7/27/72	Filed affidavit of service re: OSC re: contempt.
8/1/72	AFM, OSC accounting and t/o, motion to vacate orders, adj. to September 19 at 9:00.
8/2/72	Referee signed certificate of contempt and OSC re: why National Cinematape, Inc and Anna Mogocsi should not be adjudged in contempt of court.RET.8/29/72 at 10:00 before District Judge.
11/19/72	AFM, adj. osc, Adj. motion vacate held and adjourned to November 6, 1972 at 1:00.
11/22/72	Filed notice of motion with affidavit of service, re: to compel payment of secured claim and to fix allowance, etc. Returnable on October 11, 1972 at 10:30.
11/30/72	Filed answer by attorneys for trustee, re: n/m to compel payment of secured claim and to fix allowance, etc. Returnable on October 11, 1972 at 10:30.
11/30/72	Motion to compel payment adj. sine die. See Referee's memo endorsed...Motion granted solely to the extent of finding & concluding that applicant's lien is valid against the trustee Other issues & adjourned sine die for reasons set forth on the record. Submit an order.
12/10/72	Referee signed order decreeing and adjudging that attorneys for bankrupt have security interest to all accounts receivable, etc.
12/26/72	Received from Clerk of Court endorsement dated October 25, 1972 by Judge Lee Gagliardi, re: holding National Cinematape Inc & Anna Mogocsi in contempt of court.
12/30/72	Filed in duplicate, affidavit pursuant to section 378a(3). Copy sent to attorney for trustee.

ROY BABITT

70 B 621 RB

DOCKET NUMBER

## SAREX CORPORATION

DATE	PROCEEDINGS
10/31/72	Referee signed order directing filing of claims against dip in superseded Chapter XI proceeding. True copy sent to trustee and attorneys for trustee. (LD January 1, 1973).
11/6/72	AFM, adj. OSC, adj. motion held & adj. to December 14, 1972 at 9:30.
11/9/72	Filed affidavit of service by attorney for trustee, re: order directing filing of claims against dip in superseded Chapter XI proceeding.
11/10/72	Referee signed OSC, re: for an order certifying O. Louis Seda in contempt of court, etc. Returnable on November 20, 1972 at 10:30.
11/20/72	OSC & application to certify for contempt held & adj. to December 14, 1972 at 9:30.
11/21/72	Filed answer by attorneys for bankrupt, re: OSC & application to certify for contempt, etc. Returnable on December 14, 1972 at 9:30.
11/24/72	Filed affidavit of service, re: OSC to certify for contempt, etc. Returnable on December 14, 1972 at 9:30.
11/24/72	Filed trustee's first interim report.
12/1/72	Filed n/m with affidavit of service, re: to dismiss affirmative defenses and papers in opposition to motion to vacate orders, etc. Returnable on December 14, 1972 at 9:30.
12/4/72	Filed request for admission under Rule 36 by Selena Goudeau Seda.
12/7/72	Referee signed order authorizing retention of Bernard Reuben of 369 East 149th Street, Bronx, NY appraiser. Copy sent to appraiser.
12/22/72	Filed appraisers oath and appraisal. (Bernard Reuben).
12/22/72	Filed appraisers application for allowance (Bernard Reuben)
1/5/73	Received from Clerk of the Court copy of Judge Lee Gagliardi's order dated January 4, 1973 adjudging Anna Magosci in contempt of court, etc.
2/1/73	AFM, Adj. OSC's, adj. motion adj. to February 20, 1973 at 11:00.



DATE	PROCEEDINGS
2/20/73	AFM held and closed, adj. OSC's, adj. motion held and closed. Decision reserved.
2/21/73	Filed inventory and covering letter, re: evidence at trial on 2/20/73.
3/12/73	Received from Clerk of the Court copy of Judge Lee Gagliardi's order dated March 9, 1973 adjudging Anna Magosci in contempt of Court, etc.
3/23/73	Received from Clerk of the Court copy of James J. Matarise's affidavit re: Anna Magosci.
4/9/73	Received from Clerk of the Court copy of Lee P. Gagliardi's order, <del>xxx</del> dated March 9, 1973, re: adjudging Anna Magosci in contempt of court.
4/18/73	21a held & adj. to May 15, 1973 at 1:30.
5/15/73	Adj. 21a held & adj. to June 28, 1973 at 12:00.
5/25/73	Filed trustee's 2nd interim report.
6/11/73	Referee signed order permitting purchase of certificate of deposit from Manufacturers Hanover Trust Co., etc.
6/28/73	Adj. 21a adj. to 8/28/73 at 11:30.
8/28/73	Adj. 21a adj. to 11/15/73 at 11:30.
11/15	Adj. 21a adj. to 12/19/73 at 10:00.
12/3/73	Filed trustee's third interim report.
12/19/73	Adj. 21a adj. to 1/28/74 at 9:30.
1974	
1/15/74	Filed opinion of Bankruptcy Judge, re: granting relief to Selena Seda & denying relief to trustee.
1/28/74	Adj. 21a adj. to 3/6/74 at 11:30.
2-5-74	Filed unsigned order re: granting application by Selena and directing payment.
2-5-74 (1)	Order signed granting reclamation application by Selena and directing trustee to make payment of certain sum & interest, etc.

SAREX CORP.

70 B 621 RB

DOCKET NUMBER

DATE	PROCEEDINGS
2.11.74	Filed notice of appeal by trustee, re: order of 2/5/74 (Selena Goudeau). Paid \$10.00 to Clerk of the Court. Receipt # 32535.
2/14/74	Mailed copy of notice of appeal to interested parties. Henry & Brecker, Esqs. - atty. for trustee & Michael Miller Esq. - atty. for Selena Goudeau, claimant.
2) 2/13/74	Order signed staying execution of order of 2/5/74 with respect to Selena Goudeau, etc.
2/21/74	Filed designation of record & statement of issues by atty for trustee, re: notice of appeal dated 2/11/74.
3/1/74	Filed additional designation of record Re notice of appeal dated 2/11/74.
3/6/74	Adj. 21a adj. to 5/15/74 at 1:30.
3/7/74	Received from the Clerk of the Court notice, re: placing record on appeal on miscellaneous motion calendar. Ret. 4/16/74 at 10:30, in room 506.
5/15	Adj. 21a....closed.
5/24	Received from the Clerk of the Court copy of Judge Pierce's memorandum & order, re: notice of appeal filed 2/11/74.
5/29	Filed trustee's fourth interim report.



NOTICE OF APPEAL TO COURT OF APPEALS

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

In the Matter

-of-

SAREX CORP.,

Bankrupt.

-----X

Selena Goudeau,

Plaintiff,

v.

Irving Arzt, Trustee of Sarex  
Corp.,  
Bankrupt,

Defendant.

In Bankruptcy

70 B 621

NOTICE OF APPEAL

X

Notice is hereby given that Irving Arzt, Trustee of Sarex Corp., Bankrupt, the defendant above named, hereby appeals to the United States Court of Appeals for the 2nd Circuit from the order of the Honorable Lawrence W. Pierce, United States District Judge for the Southern District of New York, entered on the 22nd day of May, 1974, affirming the order of the Honorable Roy Babbitt, Bankruptcy Judge, dated February 5, 1974 directing the trustee of the bankrupt to pay to Selena Goudeau, the plaintiff herein, \$10,000 of the proceeds

of the lien sale held by the bankrupt on May 1, 1972, as the principal amount due her pursuant to the terms of the promissory note running from the bankrupt to the plaintiff dated July 15, 1970; further directing the trustee to pay the plaintiff \$2,175.00 as interest on said principal amount at the rate of nine (9%) percent from July 15, 1970 to December 15, 1972; and denying the trustee's motion dated June 10, 1972 to set aside the orders of the Bankruptcy Court entered on March 22, 1972 granting the plaintiff reclamation of certain property held by the bankrupt but staying execution of said reclamation order, and April 16, 1972, removing the aforesaid stay of execution of the reclamation order.

Dated: New York, New York  
June 20, 1974

HENRY & BRECKER  
Attorneys for Trustee

By \_\_\_\_\_  
MARTIN F. BRECKER  
Office & P. O. Address  
40 Exchange Place  
New York, N.Y. 10005

TO: Michael Miller, Esq.  
(Attorney for Selena Goudeau)  
110 E. 59th Street  
New York, N.Y. 11022



MEMORANDUM AND ORDER, PIERCE, J.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In the Matter :

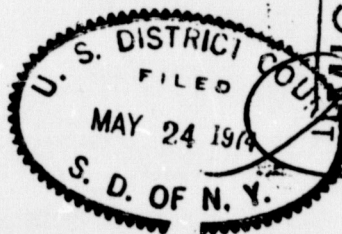
of :

SAREX CORP., :

Bankrupt. :  
-----X

In Bankruptcy

70 B 621



MICROFILM

MAY 24 1974

MEMORANDUM AND ORDER

This is an appeal from the Referee's order granting a creditor's motion for an accounting and turnover of funds and overruling the trustee's defenses to the claimed security interest. The central question presented is whether the security agreement filed by the creditor was sufficient to create a lien on all the bankrupt's tangible physical assets.

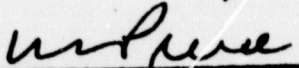
As recently noted by the Second Circuit a "security agreement embodies the intentions of the parties." In Re Laminated Veneers Co., 471 F.2d 1124, 1125 (2d Cir. 1973). The Referee herein found that it was "the obvious intent of the parties to secure the demand promissory note with the tangible movable assets of Sarex." Referee's Opinion at 21. This finding, in this Court's view, is amply supported by

the record. Having found this intention, it must then be determined whether the security agreement properly reflected it by reasonably identifying the collateral securing the note as required by U.C.C. §9-110. On this point the Court is persuaded that the Referee's reading of the security agreement was correct. Moreover, the Court feels that the trustee's reliance on Laminated Veneers, supra is misplaced and that the Referee properly distinguished that decision.

The Referee's Order is hereby affirmed.

SO ORDERED.

Dated: New York, New York  
May 22, 1974

  
\_\_\_\_\_  
LAWRENCE W. PIERCE  
U. S. D. J.



NOTICE OF APPEAL TO DISTRICT COURT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

SAREX CORP.,

Bankrupt,

Bankruptcy No.

70 B 621

SELENA COUDEAU,

Plaintiff,

v.

NOTICE OF APPEAL

IRVING ARZT, Trustee of Sarex Corp.,

Bankrupt.

Defendant.

-----X

IRVING ARZT, Trustee of Sarex Corp., Bankrupt,  
the above named defendant, appeals to the district court  
from the order of the Bankruptcy Judge entered in this  
case on February 5, 1974, directing the Trustee of the  
Bankrupt to pay to Selena Goudeau, the Plaintiff herein,  
\$10,000 of the proceeds of the lien sale held by the  
Bankrupt on May 1, 1972, as the principal amount due her  
pursuant to the terms of the promissory note running from  
the Bankrupt to the Plaintiff dated July 15, 1970; further  
directing the Trustee to pay the plaintiff \$2,175.00  
as interest on said principal amount at the rate of nine  
(9%) percent per annum from July 15, 1970 to December 15,  
1972; and denying the Trustee's motion, dated June 10,

1972, to set aside the Orders of the Bankruptcy Court entered on March 22, 1972, granting the Plaintiff reclamation of certain property held by the Bankrupt but staying execution of said reclamation order, and April 16, 1972, removing the aforesaid stay of execution of the reclamation order.

The parties to the order appealed from and the names and addresses of their respective attorneys are as follows:

Irving Arst, Trustee of Sarex Corp., Bankrupt;  
Henry & Brecker, Esqs.  
Attorneys for Trustee  
40 Exchange Place  
New York, N. Y. 10005

Selena Goudeau, Claimant  
Michael Miller, Esq.  
Attorney for Claimant  
110 E. 59th St.  
New York, N.Y. 10022

Dated: New York, New York  
February 11, 1974

HENRY & BRECKER  
Attorneys for Trustee  
By Ira S. Greene  
Ira S. Greene  
Office & P. O. Address  
40 Exchange Place  
New York, N.Y. 10005



ORDER GRANTING RECLAMATION

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----

IN THE MATTER	:	In Proceedings for Arrangement
OF	:	No. 70 B 621
SAREX CORPORATION,	:	
Debtor.	:	<u>ORDER GRANTING RECLAMATION</u>

-----

SELENA GOUDEAU ("Selena") having moved by application and Notice of Motion dated March 3, 1972 for the reclamation of certain property then in the possession of the debtor-in-possession, Sarex Corporation ("Sarex"), and the same having come on to be heard before me on the 16th day of March, 1972, and there being no opposition to said Motion for Reclamation, and sufficient cause having appeared therefor, and an Order having been granted on said 16th day of March, 1972 granting Selena reclamation of the said certain property, more particularly described in the application of Selena, and this Court having ordered that said Order of March 16, 1972 be stayed until further order of this Court, and this Court having further ordered on the 6th day of April 1972 that the stay contained in the Order of this Court dated the 22nd day of March 1972 be terminated, and Sarex having been

adjudicated a Bankrupt on the 4th day of April 1972, and a Trustee having been appointed for Sarex by Order of this Court dated the 14th day of April 1972, and a lien sale of Sarex' property having been held on the 1st day of May 1972, and Selena having moved by Order to Show Cause of this Court, granted on the 11th day of May 1972, for an accounting of the proceeds received by the Trustee from the sale of Sarex' property, sold at the aforementioned lien sale, and for an Order requiring the Trustee to turn over said proceeds, and t this Court having further ordered on the 11th day of May 1972 that the Trustee be restrained from disposing of any of the proceeds of the lien sale attributable to the property for which this Court had previously granted Selena reclamation, and the Trustee having asserted in its Answer of the 11th day of June 1973 three affirmative defenses to Selena's Motion for Accounting and Turnover of Proceeds, and the Trustee having moved by application and Notice of Motion dated the 10th day of June 1972 to vacate and set aside the Orders of this Court entered on the 22nd day of March 1972 and the 6th day of April 1972, and Selena having opposed the



Trustee's said Motion to vacate, and Selena further having cross-moved by Notice of Cross-Motion dated the 1st day of December 1972 to dismiss the said affirmative defenses asserted by the Trustee in its Answer of the 11th of June 1972, and the Trustee having examined Selena under oath on the 20th day of June 1972, and the Trustee having further examined O. Louis Seda under oath on the 20th day of November 1972, and Selena having requested the Trustee to admit, pursuant to FRCP Rule 36, the genuineness of an agreement between Sarex and EGL Enterprises, Ltd. ("EGL") dated the 12th day of February 1970, and to further admit that said agreement created a lien by pledge upon the molds of Sarex, manufactured for Sarex by EGL, and Selena having further notified the Trustee on the 1st day of December 1972 that, pursuant to FRCP Rule 44 1 of her intention to raise an issue concerning the law of Canada, and the issues having come on to be heard before me on the 14th day of December 1972 and the 20th day of February 1973, and testimony having been taken thereon,

NOW, upon the application of Selena dated the 11th

day of May 1972, and upon all the other papers hereinbefore recited, and after hearing Michael Miller, Esq., attorney for Reclaimant, in support of said application, and Henry & Brecker, Esqs., attorneys for Trustee, in opposition thereto, and after having heard each of said respective attorneys, upon each of the other motions hereinbefore recited, and it appearing that said Trustee has in his possession the proceeds from the sale of property upon which Selena has a valid security interest, to wit: machinery, equipment and fixtures; molds, tools, dies, component parts, including specifically: 1 x 1 two-cavity cassette cover and base mold, 2 x 2 four-cavity cassette cover and base mold, one twenty-four cavity roller mold, and one sixteen-cavity hub mold, and it further appearing that the agreement between Sarex and EGL dated the 12th day of February 1970 was genuine, and it further appearing that said agreement created a lien by pledge upon the molds of Sarex, manufactured for it by EGL, and upon the other exhibits duly received in evidence, including the letter from Paul A. Gelinas, Esq. to Michael Miller, dated the 16th day of



February 1973, concerning the law of Canada, and it further appearing that Selena is entitled to immediate possession of the proceeds of the lien sale in the possession of the Trustee to the extent of Selena's security interest, it is


ORDERED, that the application of Selena be and the same hereby is granted and the Trustee, Irving Arzt, is hereby directed to pay to Selena \$10,000 of said proceeds as the principal amount due to Selena, pursuant to the terms of the promissory note from Sarex to Selena dated the 15th day of July 1970; and it is further

ORDERED, that the Trustee pay to Selena \$2,175 as interest on said principal at the rate of 9% per annum from July 15, 1970 to December 15, 1972; and it is further

ORDERED, that enforcement of the within order shall be stayed for a period of ten (10) days and, in the event an appeal is taken from this order, its enforcement shall continue to be stayed until a final disposition of said appeal to the District Court.

Dated: New York, N. Y.

February 5, 1974

  
Bankruptcy Judge

OPINION, ROY BABITT, BANKRUPTCY JUDGE  
DATED January 15, 1974

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
In the Matter : In Bankruptcy  
of : No. 70 B 621  
SAREX CORPORATION, :  
Bankrupt : OPINION  
----- x

APPEARANCES:

HENRY & BRECKER ESQS.  
Attorneys for Trustee,  
40 Exchange Place,  
New York, New York 10005  
BY: Martin F. Brecker, Esq.,  
Of Counsel.

MICHAEL MILLER, ESQ.,  
Attorney for Claimant, Selena Seda,  
110 E. 59th Street.,  
New York, New York 10022

---

ROY BABITT, Bankruptcy Judge:

Sarex Corporation, an erstwhile debtor under Chapter XI of the Bankruptcy Act, Sections 301 et seq., 11 U.S.C. §§ 701 et seq., was adjudged bankrupt when an arrangement could not be made with the company's creditors. The bankruptcy trustee and a claimed secured creditor are antagonists in a dispute over funds generated from a sale of some of the now bankrupt's physical assets. The dispute is placed into focus by two motions now before the court.

The first is by Selena Seda (Selena) for an order directing



Sarex's trustee to account to Selena for the proceeds of certain property sold in a lien sale on May 1, 1972, and following such accounting, to turn over to Selena a portion of the proceeds<sup>1</sup> derived from that sale attributable to property claimed by her.

The second motion is by Sarex's bankruptcy trustee for an order vacating certain prior orders of this court which had granted a motion by Selena to foreclose on certain property held, it was said, as security for a loan made by her to the bankrupt. The trustee also challenged the validity of the security interest asserted by Selena in affirmative defenses in his answer to her motion.

For the reasons set forth below, the trustee's motion to set aside the aforementioned orders of this court is denied; his defenses to Selena's claimed security interest are overruled; Selena's motion for an accounting and turn over of funds is granted.

---

1. Selena's husband O. Louis Seda, was the principal officer and director of Sarex during the Chapter XI proceedings.

The background facts surrounding this controversy are not in dispute although some facts germane to these motions are and were tried to the Court.

Under an agreement dated February 12, 1970, between Sarex and E.G.L. Enterprises Ltd., ( E.G.L. ) in Montreal, Canada, E.G.L. agreed to manufacture and deliver to Sarex, and Sarex agreed to purchase from E.G.L., 5,000,000 plastic cassette covers and bases of various specifications. The cassette covers and bases were to be delivered and paid for according to a schedule contained in the Agreement. Sarex also agreed to purchase from E.G.L. a " 1 X 1 cavity mold" which was essential to the manufacture of a portion of the aforementioned cassette covers and bases. The purchase price of the mold was \$9,500.00 of which \$3,500.00 was to be paid on March 12, 1970 and the remaining \$6,000.00 paid according to an amortization schedule meant to coincide with the delivery by E.G.L. of the cassette covers and bases. Sarex agreed not to remove the 1 X 1 cavity mold from E.G.L.'s premises until the mold had been paid for. The Agreement finally provided that Sarex would purchase a " 2 X 2 cavity mold " (necessary for the production of the remaining cassette covers and bases) from E.G.L. for the price of \$25,300. with Sarex once more agreeing not to remove the mold from E.G.L.'s premises until it had been fully paid for.



On April 17, 1970, and before judgment E.G.L. seized the two aforementioned molds. In its "declaration" to the Superior Court for the Province of Quebec dated April 20, 1970, E.G.L. contended, among other things, that Sarex was in default in the amount of \$7,538.56 for its failure to take delivery of and pay for the cassette covers and bases ordered by it in accordance with the delivery and payment schedule in the February 12, 1970 Agreement. On July 5, 1970, E.G.L. obtained a default judgment against Sarex in the Canadian court; this judgment confirmed the seizure of the two molds and ordered that they be sold to satisfy the debt of \$7,538.56 owed E.G.L. by Sarex plus costs.

On July 2, 1970, in pursuance of a "Writ of Execution" previously issued, the two molds were sold by a bailiff of the Superior Court to George G. Glass Inc., of Montreal, Canada, for \$3,000.00. What happened next is not altogether clear from the record here, but there is evidence to the effect that by an "Agreement of Sale" dated July 15, 1970, George G. Glass, Inc., sold the two cavity molds back to E.G.L. for the sum of \$1.00 and "other good and vaild consideration." (Letter dated February 16, 1973 from Paul A Gelinas to Michael Miller).

In the meantime, and in early July, 1970, O. Louis Seda as President of Sarex and acting on its behalf, borrowed \$10,000.00 from his wife Selena who was a director of Sarex. The loan was evidenced by Sarex's demand promissory note payable to Selena with the interest at the rate of 9% per annum.

(In the analysis following, this exchange shall be referred to as the "transaction"). To secure this promissory note, a security agreement was executed on July 15, 1970, in favor of Selena (hereinafter referred to as the "transfer") granting her a security interest in the following property owned by Sarex:

"Machinery, equipment and fixtures;  
Molds, tools, dies, component parts  
including specifically the:

1 X 1 two cavity cassette  
cover and base mold

2 X 2 four cavity cassette  
cover and base mold

One twenty-four cavity roller mold

One sixteen cavity hub mold"

On July 23, 1970, Selena perfected her security interest in the aforementioned property by filing under the Uniform Commercial Code, on Form UCC-1 with the State of New Jersey. Subsequent to that date, one of the items specifically enumerated, the 1 X 1 cavity mold, was released from the lien; a termination statement was filed to effecuate the release of this property from her lien.

Armed with the \$10,000.00 from his wife, Louis Seda made a trip to Canada in early July 1970 with Norman Laithold, then attorney for Sarex, to negotiate with E.G.L. for the return of the molds and the resumption of production of the cassette covers and bases. The negotiations were successful



for on July 14, 1970 E.G.L. and Sarex executed a "Memorandum of Agreement" under which Sarex agreed to deliver to E.G.L. its certified check in the amount of \$10,000: in return, E.G.L. agreed to immediately transfer title to the 2 X 2 cavity mold to Sarex and to resume manufacturing cassette covers and bases using the 1 X 1 cavity mold. The 1 X 1 mold would then become the absolute property of Sarex upon payment to E.G.L. for the final shipment of cassette covers and bases.

Two additional provisions of the July 14, 1970 "Memorandum of Agreement" are noteworthy of mention: In paragraph 9, Sarex and E.G.L. agreed to "purely and simply terminate" the Agreement dated February 12, 1970; they further agreed to "release and discharge each other from all claims, damages, cause of action or action, past, present or future pursuant to any court proceedings instituted between the parties..." In paragraph 10, E.G.L. declared itself "to have been fully satisfied and paid for any amount which might have been owed or which may be owed pursuant to that certain judgment dated June 5, 1970 in the aforesaid action..."

The next significant date in the chronology is August 13, 1970 the date Sarex filed its petition for an arrangement under Chapter XI of the Bankruptcy Act, Sections 301 et seq., 11 U.S.C. §§701 et seq.<sup>2</sup>

---

2. The petition under Chapter XI was filed under the authority confired by Section 322, 11 U.S.C. §722.

On March 3, 1972, Selena moved this court for an order granting her reclamation and possession of certain of Sarex's personal property, specifically those items of collateral noted on the July 15, 1970 security agreement executed in her favor, supra, p. 5. The motion was grounded in Selena's assertions that no part of the principal or interest of the demand promissory note evidencing her \$10,000. loan to Sarex had been paid, although demanded. While the motion was made upon notice to the attorneys for the debtor, Sarex, it was not opposed by the debtor, who, it should be observed had the power of trustee under Section 342 of the Act, 11 U.S.C. §742.

This court granted Selena's motion and entered an order decreeing that she be entitled to reclaim the property sought by her motion papers upon reasonable notice to Sarex. While execution of this order was stayed until further order, such further order was entered on April 6, 1972 terminating the stay thereby allowing Selena to pursue the relief granted by the order of March 22, 1972.

One week later on April 13, 1972, Sarex was adjudicated<sup>3</sup> a bankrupt and a trustee was duly appointed.

---

3. Section 338 of the Act, 11 U.S.C. §738



On May 1, 1972, the trustee conducted a lien sale at the Sarex plant in North Bergen, New, Jersey. Certain property including machinery, equipment, molds, tools and so forth was sold. This sale gave rise to Selena's motion dated May 11, 1972 now before this court, brought on by order to show cause why the trustee should not be ordered to "1. Account to Selena G. Seda for the proceeds of her property sold in a lien sale on May 1, 1972...and 2. Turn over and deliver to said Selena G. Seda the proceeds derived from the sale of her property at the aforementioned lien sale..." Selena's argument, essentially, is that by virtue of this court's orders of March 22, 1972 and April 6, 1972, she was entitled to possession of those items sold by the trustee in the May 1, 1972 lien sale, and that since the proceeds from the lien sale were in excess of her claim, she should be entitled to full payment of the principal of her loan to Sarex (\$10,000) plus interest and costs.

The trustee filed an answer to this motion and asserted affirmative defenses. In addition and faced with prior orders apparently adjudicating Selena's rights, the trustee also sought an order to set aside and vacate those prior orders, those of March 22, 1972 and April 6, 1972, which had granted Selena's unopposed motion for reclamation.

There are thus two separate but related motions here for decision, i.e., Selena's motion for an order compelling the trustee to account to her for the proceeds of certain property he sold, and then to pay her such amount as would satisfy her claim evidenced by promissory note; and the trustee's motion for an order vacating the prior orders of this Court made on March 22, 1972, which granted Selena's

motion for reclamation and possession of certain property. As a necessary adjunct the court considers also the trustee's defenses seeking to adjudge Selena's security interest in Sarex's property to be void and therefore inoperative against Sarex's trustee.

I consider the trustee's motion and defenses, for their resolution will control Selena's motion calling on the trustee to render an accounting and turn over funds.

The trustee relies on two theories to support his motion to vacate an earlier order granting Selena's motion for reclamation of property and void Selena's lien. First he attacks the transfer of the security interest as a fraudulent transfer *and* therefore voidable; he <sup>then</sup> assails the sufficiency of the description (to create the security interest) of the items of collateral noted on the schedule of the security agreement of July 14, 1970. Both theories fail.

#### TRUSTEE'S FIRST CONTENTION

Trustee summarizes his first theory as follows:

" That Selena (Seda's) lien is invalid because it was given to collateralize her loan that was used by the bankrupt (i.e. Sarex) to make a (payment) to its unsecured creditor (E.G.L.) in Canada." (Reply Memorandum of Trustee dated April 18, 1972, page 2)



and he relies on Dean v Davis, 242 U.S. 438 (1917), and Section 67 of the Bankruptcy Act, 11 U.S.C. §107, to support his position. ,

In Dean v Davis, supra, a debtor had discounted certain notes with a bank which the bank later concluded bore forged endorsements. The bank, threatening criminal prosecution, demanded that the debtor take up the notes. The debtor appealed to Dean, his brother-in-law, for a loan of \$1,600.00 and promised to secure it by a mortgage on all his property which he represented to be worth more than five times that amount. Dean provided the money and, acting in conjunction with the debtor's father, paid the bank the amount of the notes and took them directly from the bank. Shortly thereafter, the debtor executed short term notes (with acceleration clauses making all payable on the default of any one) and a mortgage to secure Dean's notes. Recordation of the security followed, but all notes were then in default because of default on payment of the first. Dean took possession of the mortgaged premises. The debtor was found to have been hopelessly insolvent during these events -- all of which took place in the four months preceding filing of a bankruptcy petition.

In upholding relief to the debtor's bankruptcy trustee, the Supreme Court concluded that the debtor's mortgage of his property to secure the notes to Dean was void under Section 67(e) of the Bankruptcy Act as it then stood, because

it was made by the debtor "'with the intent and purpose on his part to hinder, delay or defraud his creditors,' to one not a ' purchaser in good faith' within the meaning of the Act." Dean v Davis, supra, at 131.

But perhaps more important than the actual holding of the case is the following statement of Mr. Justice Brandeis, writing for the court, since known as the rule of Dean v Davis:

"Making a mortgage to secure an advance with which the insolvent debtor intends to pay a pre-existing debt does not necessarily imply an intent to hinder, delay or defraud creditors. The mortgage may be made in the expectation that thereby the debtor will extricate himself from a particular difficulty and be enabled to promote the interest of all other creditors by continuing his business. The lender who makes an advance for that purpose with full knowledge of the facts may be acting in perfect 'good faith.' But where the advance is made to enable the debtor to make a preferential payment with bankruptcy in contemplation., the transaction presents an element upon which fraud may be predicted. The fact that the money advanced is actually used to pay a debt It is a question of fact in each case what the intent was with which sought and made."

This rule was incorporated into the sweeping 1938 revision of the Bankruptcy Act by the addition of Section 67d(3), but Congress scrutinized it again in 1952, and as revised controls this litigation. In this 1952 amendment, Congress hoped to overcome objections to its 1938 version so it might represent "a more accurate statutory embodiment of Dean v Davis."



House Report No. 2320, 82nd Congress, 2nd Session (1952).

As Section 67d(3) now stands, 11 U.S.C. §107d(3), the trustee must satisfy all the elements of the section to prevail in his motions. Steel Structures Inc., Star Manufacturing Co., 466 F.2d 207 (6th Cir. 1972); 4 Collier on Bankruptcy (14th ed) ¶67.38. In setting the elements of the trustee's burden, Section 67d(1)'s elements must be read with Section 67d(3). Those elements are as follows:

(1) That the debtor has made a transfer of his property or incurred an obligation;

(2) That the debtor was insolvent at the time or as a result of the transfer or obligation;

(3) That the transfer or obligation became effective within four months of the filing of the petition initiating a proceeding under the Bankruptcy Act;

(4) That the transaction must have been entered into on contemplation of the filing of such a petition or in contemplation of liquidation of all or the greater portion of the debtor's property;

(5) That the transaction must have been entered into with the intent to use the consideration obtained to enable any creditor of the debtor to obtain a greater percentage of his debt than some other creditor of the same class;

(6) That the transferee or obligee must, at the time of the transaction, know or believe that the debtor intends to make such use of the consideration.

Clearly the Sarex Company made a transfer of its property within the meaning of the Act, Section 1(30), 11 U.S.C. §1(30), and in view of the conceded facts that Sarex executed the security interest in certain of its property in favor of Selena on July 15, 1970, for her \$10,000.00 loan which security

13

A 44a

interest was perfected in New Jersey on July 23, 1970, she wisely refrains from urging otherwise.

The trustee bears the burden of establishing by a preponderance of the evidence that Sarex was insolvent on July 15, 1970, or that it was so rendered as a result of the transfer of the security interest to Selena.

Section 67d(1)(d) of the Act 11 U.S.C. §107d(1)(d), creates the proper test of insolvency for purposes of a trustee's suit under Section 67d(3), as here:

"A person is 'insolvent when the present fair salable value of his property is less than the amount required to pay his debts,..."

The term "present fair salable value" may be considered the equivalent of the term "fair valuation" carried in the definition of "insolvency" in Section 1(19) of the Act 11 U.S.C. §1(19). Rudin v Steinbugler, 103 F.2d 323 (2d Cir. 1939); 4 Collier on Bankruptcy (14th ed) ¶67.38. But because of the exclusion of exempt property from the word "property" as defined in Section 67d(1)(a), and the expanded definition of "debt" found in Section 67d(1)(b) (including non-provable debts), "insolvency" for purposes of proceedings under Section 67d(3) differs substantially from the definition of Section 1(19) of the Act.

---

4. Section 1(19) of the Act provides: "A person shall be deemed insolvent within the provisions of this Act whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed, removed, or permitted to be concealed or removed, with intent to defraud, hinder, or delay his creditors, shall not at a fair valuation be sufficient in amount to pay his debts."



It is therefore possible for a person to be solvent for some purposes of the Bsnkrupctcy Act, and yet be found insolvent for purposes of proceedings under Section 67d(3). But to recognize this does not ease the ultimate burden of the trustee to establish this element of Section 67d(3) by a preponderance of the evidence.

Various financial documents, schedules, and inventories were introduced into evidence by the trustee so that he might sustain his burden of showing Sarex's insolvency on July 15, 1970. These papers introduced included:

an unaudited balance sheet of Sarex Corporation as of March 31, 1970; an inventory of machinery and equipment belonging to Sarex Corporation as of August 10, 1970, prepared by Martin Fein and Co. on that date; various schedules of assets and liabilities of Sarex from its Petition for an Agrrement under Chapter XI filed August 13, 1970; and an inventory of "assets and goods" made by Messrs. Seda, Crowe and Magocsi on April 17, 1971.

None of these documents, nor any other papers, identified with any degree of particularity the "property" (assets) or "debts" (liabilities) of Sarex as of July 15, 1970. Nor did they demonstrate how those assets or liabilities might have been affected by the transfer to Selena of the security interest or the obligation incurred by Sarex to her on that date.

An experienced appraiser of real estate and businesses testified that a schedule of assets consisting of an inventory of goods, machinery and equipment taken April 17, 1971, would have had an "orderly liquidation value" of between \$114,000.00 and \$157,000.00 on July 15, 1970 (Transcript of Hearing, December 14, 1972, p.26).

But there was no proof that the assets listed on the April 17, 1971 inventory were the same assets owned by Sarex on July 15, 1970, nine months earlier.. Furthermore, the same expert testified that in his opinion the aforementioned assets would have had a value of between \$230,000.00 and \$250,000.00 on July 15, 1970, to an "in place" purchaser, (Id. at 28). However once more no proof was made that the assets owned by Sarex on April 17, 1971 were the same assets it owned on July 15, 1970.

Even less proof was offered with respect to the liabilities ("debts" as used in Section 67d(1)(d)) of Sarex on July 15, 1970. Two schedules enumerating the secured and unsecured debts of Sarex as of August 13, 1970, and totaling \$242,942.79 were introduced into evidence (Deposition of O. Louis Seda, Nov. 20, 1972 pp. 20 and 23) but it was not established what debts were in existence on July 15, 1970. There was testimony by Mr. Seda that the debts were "substantially lower on July 15." (Id. at 23) compared with the debts listed on the August 13, 1970 schedules, perhaps between \$30,000 and \$35,000" lower. (Id. at 24). This is substantially all the evidence in the record offered to shed light on what may have been owed by Sarex on July 15, 1970, a necessary ingredient for the trustee en route to his showing of insolvency.

To be sure there is no doubt that Sarex was in a tight financial position on July 15, 1970 -- just one month before



it filed its Chapter XI petition. There is evidence that on July 15 it was unable to pay E.G.L. for delivery of the cassette covers and bases as called for in the February 12 agreement. Sarex's inability to pay its current debts as they matured does not, without more, establish its insolvency for purposes of these proceedings. Hopfan v Knauth, 282 N.Y.S. 219 (1935); cf. Fidelity Trust Co. v Union National Bank 313 Pa. 467, cert. denied, 291 U.S. (1934). It is of course true that Mr. Seda, Selena's husband, cannot be considered a witness eminently disinterested in the event. But his interest in Selena's litigation does not mandate total rejection of his testimony. Certainly it is entitled to some weight. But no matter how little weight is given to Mr. Seda's testimony, the trustee has not overborne it by his own proof. The trustee cannot ask the Court to totally reject Mr. Seda's evidence in the absence of affirmative proof tending to show that the evidence was colored by the husband - wife relationship between Mr. Seda and Selena.

I have already noted that the definition of insolvency in Section 67d(1)(d) differs from the definition of insolvency carried by Section 1(19). It is apparent that Congress meant to require a less stringent standard of insolvency under Section 67 than in other aspects of bankruptcy proceedings. But that is not at one with suggesting that insolvency can be presumed from ambiguous proof. When insolvency is in issue it is the burden of the trustee to establish that fact by evidentiary proof. Liberty National Bank v Bear, 265 U.S. 365 (1924);

Trautwein v Mandel, 127 F.2d 567 (8th Cir. 1942); In re Bette Jane Shoe Corp., 87 F. Supp. 392 (E.D.N.Y. 1949). Here there is no concrete evidence that Sarex was indeed insolvent on July 15, 1970, or that it was rendered so as a result of the obligation incurred by Sarex or by the transfer of the security interest in certain property to Selena to secure the obligation. I find this a fact. Since the trustee has failed to meet his burden with respect to proof that Sarex was insolvent on July 15, 1970, or was made so because of the conferral of the security interest, the attack on Selena's security interest fails. It is therefore not necessary to consider the remaining elements of Section 67d.

TRUSTEE'S SECOND CONTENTION

The trustee says that:

" Selena (Seda's) lien is invalid because the description in the security agreement creating the lien is insufficient." (Reply memorandum of Trustee dated April 18, 1972, p.2).

Under the schedule of items of collateral set forth in the security agreement dated July 15, 1970, the following property of Sarex is listed:

" Machinery, equipment and fixtures  
Molds, tools, dies, component parts  
including specifically the:

1 X 1 two cavity cassette  
cover and base mold

2 X 2 four cavity cassette  
cover and base mold

One twenty-four cavity roller mold

One sixteen cavity hub mold"



Also included in the "schedule" is the statement that these items are:

" To be located either at the Debtor's plant in North Bergen, New Jersey; and in the case of the molds also at the plants of contractors who may be using said molds in the manufacture of products for the Debtor."

Trustee first insists that the phrase "machinery, equipment and fixtures..." is inadequate to sustain the validity of the security agreement with respect to such items because the description of those items falls short of the description required of collateral in security agreements by the Uniform Commercial Code and case law. Trustee cites Sections 9-203 and 9-110 of the Uniform Commercial Code as well as a recent case of this Circuit, In re Laminated Veneers, Inc., 471 F.2d 1124 (1973).

He also maintains that the description of the next category of items listed under the schedule of the security agreement, "molds, tools, dies, component parts," is likewise inadequate to support the attachment of a valid security interest by Selena save for three of the four items specifically enumerated: the 2 X 2 four cavity cassette cover and base mold," the "twenty-four cavity roller mold" and the "sixteen cavity hub mold." (While the schedule specifically lists a fourth item, a "1 X 1 cavity cassette cover and base mold," this item of collateral was released from the security agreement shortly after Selena's claimed interest was filed on July 23, 1970).

To support his attack against the claimed security interest in that property the trustee relies on the two sections of the Uniform Commercial Code cited supra, and on the Laminated Veneers case, also cited supra.

In further support of his contention that Selena has no security interest in the proceeds of the May 1, 1972 public auction, beyond that which she received for the three aforementioned specifically identified items, the trustee argues that the words "including specifically" after the more encompassing category of "molds, tools, dies, component parts" are words of limitation, the logical effect of which limit the security interest in that category of items only to those specifically enumerated.

I find that the security interest is valid against the trustee for it attached to all items noted on the "schedule" of the July 15, 1972 security agreement which are "located either at the Debtor's plant in North Bergen, New Jersey; and in the case of the molds, also at the plants of contractors who may be using said molds in the manufacture of products for Debtor" with the exception of the aforementioned "1 x 1 two cavity cassette cover and base mold."

It seems to me that it was the intent of the parties, in drawing up the security agreement dated July 14, 1970, to secure payment of the demand promissory note by the tangible physical assets of Sarex, including those assets belonging to Sarex but not located at its place of business in North Bergen, New Jersey, i.e., to include the molds being used by E.G.L. and that this intent is manifested by the very breadth of the



plain language describing the items of collateral listed on the schedule. And since the trustee presented no evidence which would indicate that the spontaneous ~~yall~~ of what the parties intended by the language used is not in fact that at all, but that less breadth was contemplated the question of the words used to show purpose should be resolved in favor of the plain meaning given to the plain words used. Section 9-203(1)(b) of the Uniform Commercial Code provides that a security agreement must contain a "description" of the collateral. As for the specificity required in this description of collateral, Section 9-110 of the Code provides that:

"For purposes of this Article, any description of personal property... is sufficient whether or not it is specific if it reasonably identifies what it described."

The official comments to Section 9-110 elaborate on this language as follows:

"The requirement of discription of description of collateral (see Section 9-203 and Comment thereto) is evidentiary. The test of sufficiency of a description laid down by this section is that the description do the job assigned to it -- that it make possible the identification of the thing described. Under this rule courts should refuse to follow the holdings, often found in the older chattel mortgage cases, that descriptions are insufficient unless they are of the most exact and detailed nature, the so-called "serial number" test."

I hold that in view of what I feel was the obvious intent of the parties to secure the demand promissory note with the tangible movable assets of Sarex, the description of the items on the schedule of the security agreement did the job assigned to it as it "reasonably identify(d)" the collateral securing the note.

Trustee places magnified emphasis on In re Laminated Veneers Inc., supra, a recent decision by the Court of Appeals for this Circuit, to support his contention that, save for the specifically identified items, the collateral listed under the schedule in the security agreement is not described with the specificity required to support the enforcement of the security interest.

Laminated Veneers involved an appeal from a decision of the District Court for the Eastern District of New York which confirmed the findings of the bankruptcy court that two automobiles were not covered by a security agreement. In affirming the district court's and the referee's findings, the Court of Appeals, Judge Lumbard dissenting, held that under New York law, use of the broad word "equipment" in an omnibus clause of a security agreement did not constitute inclusion of two automobiles which belonged to the bankrupt corporation where the only mention in the schedule of a vehicle of any kind in the security agreement was the separate scheduling of a truck. Accordingly the court said, any



examining creditor could properly conclude that the truck was the only vehicle intended to be covered by the security agreement.

I consider Laminated Veneers to be distinguishable from the instant case. There the two automobiles, unlike the truck, were not listed on the schedule. The asserted security interest in the automobiles was predicated on their being included in the generic term, "equipment" a word not commonly used to describe passenger cars. Furthermore, the word "equipment" there used was first employed in association with a lengthy list of the most particular types of plant furnishings: "tables, chairs, work benches" and so forth, but not vehicles.

By contrast here the context in which the word "equipment" was used suggests that it was not used not only as a generic term but rather as a true reference to industrial equipment, comparable in breadth to "machines," "tools," "dies" and so forth. Moreover the "machines," "equipment" "tools" "molds" etc. were particularized by the location qualifier -- "at the Debtor's plant.." -- which accounts for the more extended description of the four specifically identified molds which were not located at the debtor's plant but which were also intended to be included as collateral in the security agreement. In other words all of the property could reasonably and by rational usage be comprehended within the use of a single word of ordinary usage. Simply stated, and to return to

Laminated Veneers, ordinary usage of the word "equipment" precluded thought<sup>1</sup> being given to two cars owned by the company particularly where its truck was set forth specifically.

In commenting on the specificity required in the description of collateral to sustain a security agreement, the court in Laminated Veneers, said that "(u)nlike a financing statement (U.C.C. §9-402) which is designed merely to put the creditors on notice that further inquiry is prudent,... the security agreement embodies the intention of the parties. It is the primary source to which a creditor's or potential creditor's inquiry is directed and must be reasonably specific." In re Laminated Veneers, Inc., supra at 1125.

I find that under the facts at bar the description of the items of collateral on the schedule of the July 15, 1972 security agreement between Sarex and Selena met this test of specificity and the requirements of Section 9-110 of the Code for the description of the items on the security agreement was "reasonably specific" and "reasonably identifie(d)" the collateral securing the note. Certainly any examining creditor could conclude that a security interest attached to all the property in question by reason of the words used and the reasonable identification of what was described.



Nor will Selena be subordinated to other creditors under inter alia. Pepper v Litton, 308 U.S. 295 (1939), merely because she was a director of Sarex and the wife of its principal officer. While this is a court applying essentially equitable principles, as we have been reminded again and again, most recently in Bank of Marin v England, 389 U.S. 99, 103 (1966), it does not follow that on the facts at bar, anything sinister occurred to support ignoring the form and reality of what took place and relegate Selena to the status of asubordinated creditor. Her loan was bona fide to a company whose financial condition was precarious, but which needed her money to remain viable. The facts here fall too short of those in Pepper v Litton and its progeny to require further comment to this defense raised by the trustee.

I conclude therefore that the trustee's attack on the security interest must fail because he did not meet his burden with respect to proof that Sarex was insolvent on July 15, 1970, or was so rendered as a result of the transfer or obligation, and further that Selena's claimed security interest is valid and enforceable having attached to all items listed on the schedule to the July 15, 1972 security agreement which are "located either at the Debtor's plant in North Bergen, New Jersey; and in the case of the molds, also at the plants of contractors who may be using said molds

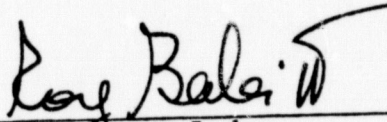
in the manufacture of products for Debtor" with the exception of the " 1 X 1 cavity cassette cover and base mold" which was released from the security agreement subsequent to its filing on July 23, 1970

The trustee's motion is denied; his defenses overruled. Selena's motion for an accounting of the proceeds of the property sold May 1, 1972 and for a turnover of such funds as are attributable to the sale of property in which she had a valid security interest is granted.

Settle order on notice.


DATED: NEW YORK, NEW YORK

January 15, 1974

  
\_\_\_\_\_  
Bankruptcy Judge

SECURITY AGREEMENT DATED July 15, 1970 .

[PHOTOSTATS]

(Opposite) 



SECURITY AGREEMENT (CHATTEL MORTGAGE)

THIS AGREEMENT, made the 15<sup>th</sup> day of July 1970 under the laws of the state of New Jersey

BETWEEN SAREX CORPORATION herein called the Debtor  
whose business address is (if none, write "none") 3850 West Side Avenue, North Bergen, New Jersey

~~XX~~

and SELENA GOUDEAU SEDA herein called the Secured Party,  
whose address is 61 Grove Street, New York, N.Y.

WITNESSETH:

To secure the payment of an indebtedness in the amount of \$ 10,000.00

with interest, payable as follows:

On Demand with interest at the rate of nine per cent (9%) per annum from  
date until paid

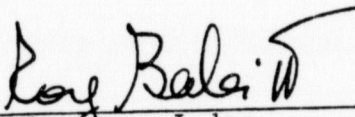
in the manufacture of products for Debtor" with the exception of the " 1 X 1 cavity cassette cover and base mold" which was released from the security agreement subsequent to its filing on July 23, 1970

The trustee's motion is denied; his defenses overruled. Selena's motion for an accounting of the proceeds of the property sold May 1, 1972 and for a turnover of such funds as are attributable to the sale of property in which she had a valid security interest is granted.

Settle order on notice.


DATED: NEW YORK, NEW YORK

January 15, 1974

  
\_\_\_\_\_  
Bankruptcy Judge

SECURITY AGREEMENT DATED July 15, 1970 .

[PHOTOSTATS]

(Opposite) 



SECURITY AGREEMENT (CHATTEL MORTGAGE)

THIS AGREEMENT, made the 15<sup>th</sup> day of July 1970 under the laws of the state of New Jersey

BETWEEN SAREX CORPORATION herein called the Debtor  
whose business address is (if none, write "none") 3850 West Side Avenue, North Bergen, New Jersey

~~XXXXXXXXXXXXXXXXXXXX~~

and SELENA GOUDEAU SEDA herein called the Secured Party,  
whose address is 61 Grove Street, New York, N.Y.

WITNESSETH:

To secure the payment of an indebtedness in the amount of \$ 10,000.00

with interest, payable as follows:

On Demand with interest at the rate of nine per cent (9%) per annum from  
date until paid

as evidenced by a note or notes of even date herewith, and also to secure any other indebtedness or liability of the Debtor to the Secured Party direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, including all future advances or loans which may be made at the option of the Secured Party, (all hereinafter called the "obligations") Debtor hereby grants and conveys to the Secured Party a security interest in, and mortgages to the Secured Party,

(a) the property described in the schedule herein (hereinafter called the collateral), which collateral the Debtor represents will be used primarily

☐ for personal, family or household purposes

☐ in farming operations

☒ in business or other use

(b) all property, goods and chattels of the same classes as those scheduled, acquired by the Debtor subsequent to the execution of this agreement and prior to its termination

(c) all proceeds thereof, if any.

(d) all increases, substitutions, replacements, additions and accessions thereto.

# 1. DEBTOR WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

## PAYMENT DEFEND TITLE

1a To pay and perform all of the obligations secured by this agreement according to their terms.

1b To defend the title to the collateral against all persons and against all claims and demands whatsoever, which collateral, except for the security interest granted hereby, is lawfully owned by the Debtor and is now free and clear of any and all liens, security interests, claims, charges, encumbrances, taxes and assessments except as may be set forth in the schedule.

## ASSURANCE OF TITLE

1c On demand of the secured party to do the following; furnish further assurance of title, execute any written agreement or do any other acts necessary to effectuate the purposes and provisions of this agreement, execute any instrument or statement required by law or otherwise in order to perfect, continue or terminate the security interest of the Secured Party in the collateral and pay all costs of filing in connection therewith.

## POSSESSION

1d To retain possession of the collateral during the existence of this agreement and not to sell, exchange, assign, loan, deliver, lease, mortgage or otherwise dispose of same without the written consent of the Secured Party.

## LOCATION

1e To keep the collateral at the location specified in the schedule and not to remove same (except in the usual course of business for temporary periods) without the prior written consent of the Secured Party.

## LIENS

1f To keep the collateral free and clear of all liens, charges, encumbrances, taxes and assessments.

## TAXES

1g To pay, when due, all taxes, assessments and license fees relating to the collateral.

## REPAIRS

1h To keep the collateral, at Debtor's own cost and expense, in good repair and condition and available for inspection by the Secured Party at all reasonable times.

## INSURANCE

1i To keep the collateral fully insured against loss by fire, theft and other casualties, Debtor shall give immediate written notice to the Secured Party and to insurers of loss or damage to the collateral and shall promptly file proofs of loss with insurers.

## NON-WAIVER

2a Waiver of or acquiescence in any default by the Debtor, or failure of the Secured Party to insist upon strict performance by the Debtor of any warranties or agreements in this security agreement, shall not constitute a waiver of any subsequent or other default or failure.

## NOTICES

2b Notices to either party shall be in writing and shall be delivered personally or by mail addressed to the party at the address herein set forth or otherwise designated in writing.

## LAW APPLICABLE

2c The Uniform Commercial Code shall govern the rights, duties and remedies of the parties and any provisions herein declared invalid under any law shall not invalidate any other provision of this agreement.

## DEFAULT

non-payment  
violation  
misrepresentation  
levy - insolvency  
death  
impairment of  
security

2d The following shall constitute a default by Debtor:  
Failure to pay the principal or any installment of principal or of interest on the indebtedness or any notes when due. Failure by Debtor to comply with or perform any provision of this agreement. False or misleading representations or warranties made or given by Debtor in connection with this agreement. Subjection of the collateral to levy of execution or other judicial process. Commencement of any insolvency proceeding by or against the Debtor. Death of the Debtor. Any reduction in the value of the collateral or any act of the Debtor which imperils the prospect of full performance or satisfaction of the Debtor's obligations herein.

## REMEDIES ON DEFAULT

acceleration  
assembling  
collateral  
attorneys' fees  
etc.

2e Upon any default of the Debtor and at the option of the Secured Party, the obligations secured by this agreement shall immediately become due and payable in full without notice or demand and the Secured Party shall have all the rights, remedies and privileges with respect to repossession, retention and sale of the collateral and disposition of the proceeds as are accorded by the applicable sections of the Uniform Commercial Code respecting "Default".

Upon any default and upon demand, Debtor shall assemble the collateral and make it available to the Secured Party at the place and at the time designated in the demand.

Upon any default, the Secured Party's reasonable attorneys' fees and the legal and other expenses for pursuing, searching for, receiving, taking, keeping, storing, advertising, and selling the collateral shall be chargeable to the Debtor.

The Debtor shall remain liable for any deficiency resulting from a sale of the collateral and shall pay any such deficiency forthwith on demand.

## MONIES ADVANCED

If the Debtor shall default in the performance of any of the provisions of this agreement on the Debtor's part to be performed, Secured Party may perform same for the Debtor's account and any monies expended in so doing shall be chargeable with interest to the Debtor and added to the indebtedness secured hereby.

## FINANCING STATEMENT

2f The Secured Party is hereby authorized to file a Financing Statement.

## ATTACHMENTS

2g The Captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this agreement nor the intent of any provision thereof.



The terms, warranties and agreements herein contained shall bind and inure to the benefit of the respective legal representatives, successors and assigns.

The gender and number used in this agreement are used as a reference term only and shall apply with ties are of the masculine or feminine gender, corporate or other form, and the singular shall likewise include This agreement may not be changed orally.

IN WITNESS WHEREOF, the Parties have respectively signed and sealed these presents the day and

SAREX CORPORATION

by

Selena G

#### SCHEDULE

Describe items of collateral, the address where each item will be located and describe any prior due thereon. If items are crops or goods affixed or to be affixed to real estate describe the real estate address of the owner of record thereof.

Items

Location, etc.

Machinery, equipment and fixtures;  
Molds, tools, dies, component parts  
including specifically the:

1 X 1 two cavity cassette cover  
and base mold

2 X 2 four cavity cassette cover  
and base mold

One twenty-four cavity roller mold

One sixteen cavity hub mold

To be located  
Debtor's plant  
New Jersey; and  
molds also at  
contractors who  
molds in the  
products for

The chief place of business of the Debtor, if other than stated in this agreement, is:

#### GUARANTEE

The undersigned guarantees prompt and full performance and payment according to the terms of the holder hereof, and, in the event of default, authorizes any holder hereof to proceed against the amount due including reasonable attorneys' fees, and hereby waives presentment, demand, protest, honor and any and all other notices or demand of whatever character to which the undersigned and the undersigned further consents to any extension granted by any holder and waives notice thereof. If litigation of each shall be joint and several.

WITNESS the hand and seal of the undersigned this

day of

pective parties hereto, and their  
the same effect whether the par-  
the plural.

d year first above written.

TION  
President  
Goudeau Seda

er liens, etc., and the amounts  
e and state the name and ad-

to.

either at the  
t in North Bergen,  
nd in the case of the  
the plants of  
no may be using said  
manufacture of  
the Debtor

or of the within agreement, to  
the undersigned, for the full  
notice of protest, notice of dis-  
ght otherwise be entitled. The  
more than one guarantor, ob-

## Security Agreement

### CHattel MORTGAGE

SAREX CORPORATION

TO

SELENA GOUDEAU SEDA

DATED, July , 1970

perfect lien, file UCC 1 (see UCC §9-401)  
Y: CONSUMER GOODS OR FARM CONNECTED COL-

LATERAL:  
-resident debtor; with filing officer in county of debtor's  
residence.

-non resident debtor; Dept. of state: if debtor has a place  
of business in only one county in N. Y., also with fil-  
ing officer of such county.

-crops; Dept. of state and also with filing officer in county  
where land, on which crops are grown, lies.

FIXTURES attached to realty; in county where land lies.

ALL OTHER CASES; Dept. of state: if debtor has a  
place of business in only one county in N. Y., also  
with filing officer in such county.

"Filing officer": in N.Y.C., the City Register of the county;  
elsewhere in state, the county clerk.

J: CONSUMER GOODS OR FARM CONNECTED COL-  
LATERAL:

-with clerk of county of debtor's residence.

-if non-resident debtor, in county where goods are kept.

-crops: in county where land lies.

FIXTURES attached to realty; with register of county  
where land lies or with county clerk if no register.

ALL OTHER COLLATERAL; with secretary of state.

N: FIXTURES attached to realty; with clerk of town  
city where land lies.

ALL OTHER COLLATERAL; with secretary of state.

Address



This FINANCING STATEMENT is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code

Maturity date (if any):

1. Debtor(s) Name (Last Name First)

**SAREX CORPORATION**

2. Debtor(s) Complete Address

**3850 West Side Avenue  
North Bergen, New Jersey**

This space for use of Filing Officer.  
(Date, Time, File Number and Filing Office.)

JUL 23 3 31 PM '70

STATE OF  
NEW JERSEY

3. & 4. Secured Party(ies) and Complete Address

**SELENA GOUDEAU SEKA  
61 Grove Street  
New York, N.Y.**

5. & 6. Assignee(s) of Secured Party and Complete Address

THE SPACES TO THE RIGHT  
HAVE BEEN DESIGNED FOR  
USE IN A WINDOW ENVELOPE  
WHEN RETURNING THE SECOND  
COPY TO THE PERSON FILING.

3.00 233,119

7. This financing statement covers the following types (or items) of property:

**Machinery, equipment and fixtures;  
Molds, tools, dies, component parts, including specifically the:**

**1 X 1 two cavity cassette cover and base mold**

**2 X 2 four cavity cassette cover and base mold**

**One twenty-four (24) cavity roller mold  
cavity**

**One sixteen (16) hub mold**

When collateral is crops or fixtures complete this portion of form.  
a. Description of real estate (Sufficient to identify the property).

b. Name and complete address of record owner.

a. ( ) Proceeds of Collateral are also covered.

9b. (X) Products of Collateral are also covered.

No. of additional sheets presented. ( )

) Filed with Register of Deeds and Mortgages of

County.

(X) Secretary of State

) Filed with the County Clerk of

County.

#### TERMINATION STATEMENT

This statement of termination of financing is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code. The secured Party certifies that the Secured Party no longer claims a security interest under the financing statement bearing the file number above.

Dated: 19

(Signature(s) of Secured Party or Assignee of Record—Not valid until signed)

FILING OFFICER COPY — ACKNOWLEDGMENT —

Filing Officer is requested to note file number, date and hour of filing on this copy and return it to the person filing, as an acknowledgment.

Julius Blumberg, Inc., 80 Exchange Place, at Broadway, New York 4, N. Y.






57-a

**A**

58a


FINANCING STATEMENT DATED July 23, 1970

[PHOTOSTAT]

(Opposite) 

59a

Due and timely service of <sup>two</sup>~~three~~ (2) copies of  
the within Appel. Appendant is hereby admitted this  
6<sup>th</sup> day of September, 1974

  
\_\_\_\_\_  
Attorney for Plaintiff - Appellee  
(Michael Miller)